

To: Grifo, Francesca[Grifo.Francesca@epa.gov]
From: Rodan, Bruce
Sent: Tue 5/2/2017 4:25:25 PM
Subject: RE: Allegation 124: request for comments on OGC justification -- new version

Yes. Good by me. I would like to see the final letter and rationale before they go out.

Thanks

Bruce Rodan

Associate Director for Science

EPA Office of Research and Development

From: Grifo, Francesca
Sent: Tuesday, May 2, 2017 12:21 PM
To: Rodan, Bruce <rodan.bruce@epa.gov>
Subject: Fwd: Allegation 124: request for comments on OGC justification -- new version

Ok?

Sent from my iPhone

Begin forwarded message:

From: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>
Date: May 2, 2017 at 12:19:53 PM EDT
To: "Rodan, Bruce" <rodan.bruce@epa.gov>, "Shaw, Betsy" <Shaw.Betsy@epa.gov>, "Teichman, Kevin" <Teichman.Kevin@epa.gov>, "Grifo, Francesca" <Grifo.Francesca@epa.gov>
Cc: "Koslow, Karin" <Koslow.Karin@epa.gov>, "Simons, Andrew" <Simons.Andrew@epa.gov>, "Hawkins, CherylA" <Hawkins.CherylA@epa.gov>, "Otto, Martha" <Otto.Martha@epa.gov>
Subject: RE: Allegation 124: request for comments on OGC justification -- new version

I just spoke with Kevin Minoli.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Therefore, from OGC's perspective, our analysis is complete. We would like the text (below) to be incorporated into the Panel's public report, which is our plan. In addition, unless others feel strongly otherwise, we'd like to see it in the letter as well.

Carol Ann Siciliano

Associate General Counsel

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-5489

siciliano.carolann@epa.gov

From: Siciliano, CarolAnn

Sent: Wednesday, April 26, 2017 11:20 AM

To: Rodan, Bruce <rodan.bruce@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>;
Teichman, Kevin <Teichman.Kevin@epa.gov>; Grifo, Francesca
<Grifo.Francesca@epa.gov>

Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Simons, Andrew
<Simons.Andrew@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>; Otto,
Martha <Otto.Martha@epa.gov>

Subject: RE: Allegation 124: request for comments on OGC justification -- new version

Thank you, all. **Bruce**, I understand, appreciate and fully agree with your edits. I've incorporated them. And I just spoke with **Betsy**, who suggested that we replace "pre-decisional" with this phrase: "This expression of opinion, which was not made in a decisional context ..." This is another great suggestion, which I incorporated. I'll send this to Kevin Minoli early this afternoon, unless I hear otherwise from folks.

Here is the NEW clean version. The attachment shows the edits.

The Scientific Integrity team, together with the Scientific Integrity Review Panel named

above, focused its review on the following text included in the EPA Scientific Integrity Policy^[1]:

When an Agency employee substantively engaged in the science informing an Agency policy decision disagrees with the scientific data, scientific interpretations, or scientific conclusions that will be relied upon for said Agency decision, the employee is encouraged to express that opinion...

The Scientific Integrity Policy applies to all EPA employees, contractors, grantees, collaborators and student volunteers, including political appointees. The freedom to express one's opinion is fundamental to EPA's Scientific Integrity Policy even (and especially), when that point of view might be controversial.

The Scientific Integrity Policy explicitly protects differing opinions. This protection is afforded to any employee "substantively engaged in the science," including the Administrator when he speaks on matters of science "informing an Agency policy decision." The protection is forward-looking and is designed to encourage the employee to express his or her opinion if he or she "disagrees with the scientific data, scientific interpretations, or scientific conclusions that will be relied upon for said Agency decision."

In this case, the Administrator was asked a science-related question during a television interview, "Do you believe that it's been proven that carbon dioxide is the primary control knob for climate?" The Administrator responded, "No. I think that measuring with precision human activity on the climate is something very challenging to do and there's tremendous disagreement about the degree of impact. So no, I would not agree that it's a primary contributor to the global warming that we see. But we don't know that yet . . . We need to continue the debate and continue the review and the analysis."

In his response, the Administrator expressed his opinion regarding contributors to global warming and called for more debate, review and analysis as a precursor to any future EPA policy decision on the matter. This expression of opinion, which was not made in a decisional context, is fully within the protections of EPA's Scientific Integrity Policy and does not violate that Policy. We also note that the Administrator, in his televised remarks, did not suppress or alter Agency scientific findings.

Expressing an opinion about science is not a violation of the EPA Scientific Integrity Policy. Indeed, the Scientific Integrity Policy -- in the spirit of promoting vigorous debate and inquiry -- specifically encourages employees to express their opinion should there be a disagreement with scientific data, scientific interpretations, or scientific conclusions.

{END}

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
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(202) 564-5489
siciliano.carolann@epa.gov

From: Rodan, Bruce
Sent: Wednesday, April 26, 2017 10:49 AM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Teichman, Kevin <Teichman.Kevin@epa.gov>; Grifo, Francesca <Grifo.Francesca@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>; Otto, Martha <Otto.Martha@epa.gov>
Subject: RE: Allegation 124: request for comments on OGC justification

All,

Hi. Thanks for the expedited work on this. Reiterating my concern on Kevin's draft from yesterday – and relevant again to Carol Ann's edits below –

Ex. 5 - Deliberative Process

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When an Agency employee substantively engaged in the science informing an Agency policy decision disagrees with the scientific data, scientific interpretations, or scientific conclusions that will be relied upon for said Agency decision, the employee is encouraged to express that opinion...

Ex. 5 - Deliberative Process

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Additionally, the policy is not actually encouraging disagreements, but rather in the event of a disagreement encouraging expression of differing opinions. So, my suggested edits:

Analysis

The Scientific Integrity team, together with the Scientific Integrity Review Panel named above, focused its review on the following text included in the EPA Scientific Integrity Policy:

When an Agency employee substantively engaged in the science informing an Agency policy decision disagrees with the scientific data, scientific interpretations, or scientific conclusions that will be relied upon for said Agency decision, the employee is encouraged to express that opinion...

The Scientific Integrity Policy applies to all EPA employees, contractors, grantees, collaborators and student volunteers, including political appointees. The freedom to express one's **Ex. 5 - Deliberative Process** fundamental to EPA's Scientific Integrity Policy even (and especially), when that point of view might be controversial.

The Scientific Integrity Policy explicitly protects **Ex. 5 - Deliberative Process** This protection is afforded to any employee "substantively engaged in the science," including the Administrator when he speaks on matters of science "informing an Agency policy decision." The protection is forward-looking and is designed to encourage the employee to express his or her opinion if he or she "disagrees with the scientific data, scientific interpretations, or scientific conclusions that will be relied upon for said Agency decision."

In this case, the Administrator was asked a science-related question during a television interview: “Do you believe that it’s been proven that carbon dioxide is the primary control knob for climate?” The Administrator responded, “No. I think that measuring with precision human activity on the climate is something very challenging to do and there’s tremendous disagreement about the degree of impact. So no, I would not agree that it’s a primary contributor to the global warming that we see. But we don’t know that yet . . . We need to continue the debate and continue the review and the analysis.”

In his response, the Administrator expressed his opinion regarding contributors to global warming and called for more debate, review and analysis as a precursor to any future EPA policy decision on the matter. This pre-decisional expression of opinion is thus fully within the protections of EPA’s Scientific Integrity Policy and does not violate that Policy. We also note that the Administrator, in his televised remarks, did not suppress or alter Agency scientific findings.

Expressing an opinion about science is not a violation of the EPA Scientific Integrity Policy. Indeed, the Scientific Integrity Policy – in the spirit of promoting vigorous debate and inquiry -- specifically encourages employees to express their opinion should there be a disagreement with scientific data, scientific interpretations, or scientific conclusions.

Thanks

Bruce Rodan, MBBS MEnvS MPH

Associate Director for Science

Office of Research and Development

From: Siciliano, CarolAnn

Sent: Tuesday, April 25, 2017 8:01 PM

To: Rodan, Bruce <rodan.bruce@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Teichman, Kevin <Teichman.Kevin@epa.gov>; Grifo, Francesca <Grifo.Francesca@epa.gov>

Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>; Otto,

Martha <Otto.Martha@epa.gov>

Subject: Allegation 124: request for comments on OGC justification

Dear Panel –

Ex. 5 - Deliberative Process

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Therefore, I have performed a legalistic analysis of the relevant language in the Scientific Integrity Policy. See below. Please take a look at it and edit freely. **I would love to get your comments by 3 pm on Wednesday April 26, if possible.**

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy and I'd like to share our justification with Kevin Minoli on Wednesday night if possible.

Ex. 5 - Deliberative Process

I have drafted the justification to be inserted into our Decision Document. I'd like to give the public a path to understand our reasoning. We wouldn't need to say all of this in the letter.

Here is my proposed text. I present it below in "clean" form for easy reading. I've also attached the Decision Document excerpt in a Word document so that you can see what I've added/changed from Kevin Teichman's last edited draft. Please let me know what you think. I welcome all comments, either here or in the attachment.

Analysis

The Scientific Integrity team, together with the Scientific Integrity Review Panel named above, focused its review on the following text included in the EPA Scientific Integrity

Policy:

When an Agency employee substantively engaged in the science informing an Agency policy decision disagrees with the scientific data, scientific interpretations, or scientific conclusions that will be relied upon for said Agency decision, the employee is encouraged to express that opinion...

The Scientific Integrity Policy applies to all EPA employees, contractors, grantees, collaborators and student volunteers, including political appointees. The freedom to express one's scientific opinion is fundamental to EPA's Scientific Integrity Policy even (and especially), when that point of view might be controversial.

The Scientific Integrity Policy explicitly protects differing scientific opinions. This protection is afforded to any employee "substantively engaged in the science," including the Administrator when he speaks on matters of science "informing an Agency policy decision." The protection is forward-looking and is designed to encourage the employee to express his or her opinion if he or she "disagrees with the scientific data, scientific interpretations, or scientific conclusions that will be relied upon for said Agency decision."

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In his response, the Administrator expressed his opinion regarding contributors to global warming and called for more debate, review and analysis as a precursor to any future EPA policy decision on the matter. This pre-decisional expression of opinion is thus fully within the protections of EPA's Scientific Integrity Policy and does not violate that Policy. We also note that the Administrator, in his televised remarks, did not suppress or alter Agency scientific findings.

Expressing an opinion about science is not a violation of the EPA Scientific Integrity Policy. Indeed, the Scientific Integrity Policy -- in the spirit of promoting vigorous debate and inquiry -- specifically encourages employees to express disagreement with scientific data, scientific interpretations, or scientific conclusions.

[THE END]

I welcome your thoughts. As I mentioned, I'll be on a mini-vacation starting about 4 pm on Wednesday April 26. If I can get your views by then, I'll share with Kevin Minoli [REDACTED]

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process If folks need until Thursday or Friday, my colleague Andy Simons can send our justification to Kevin Minoli when it's ready. (Andy Simons is my Assistant General Counsel and is acting for me in my absence.)

Or we could wrap this up on Monday when I'm back in the office. I've chatted with Francesca about this, and she is comfortable waiting until Monday if need be. Thank you for your attention.

Carol Ann Siciliano

Associate General Counsel

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Office of General Counsel

U.S. Environmental Protection Agency

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[1] https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf (last visited April 4, 2017)